



#5
P9
2/24/03

KEG 2-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
George Washington Baughman III , *et al.*)
Serial No. 09/955,417) Examiner Phi Dieu Tran A.
Filed: September 18, 2001) Group Art Unit: 3637
For: "Method and System for Presenting)
Merchandising at an Outdoor Paved)
Surface"

COMMISSIONER OF PATENTS AND TRADEMARK
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

DECLARATION UNDER 37 CFR § 1.132

Kristin D. Kern declares as follows:

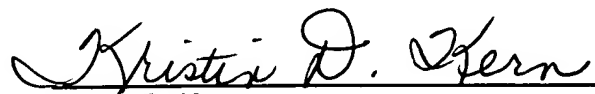
- 1) That she was formerly known as Kristin E. Griffin;
- 2) That she is a citizen of the State of Ohio, having a residence at 272 Shepherd Lane, Marysville, Ohio 43040;
- 3) That she is an inventor, named in the above-identified application for United States patent;
- 4) That her resume is annexed hereto as Exhibit A;
- 5) That she has been advised that the claims of the above-identified application for U. S. patent have been rejected under Section 103 of the Patent Statute, the Examiner citing Pool, U. S. Patent No. 2,638,636 (Pool) in view of Feleppa, U. S. Patent No. 5,700,102 (Feleppa) and Thornton, U. S. Patent No. 3,673,720 (Thornton) and Reilley *et al.*, U. S. Patent No. 5,120,941 (Reilley *et al.*);
- 6) That the present invention directed to an outdoor retail merchandising technique typically employing the parking lot of a retail facility wherein a retailing environment is developed on a seasonal basis in a highly improved manner involving the utilization of anchors, poles, tension cables and large signage to define an entrance region, bay regions beneath overhead signage and a cash/wrap region immediately and highly visible to the customer;
- 7) That studies described in the above application have determined that parking lots represent an undesirable retailing environment generally precluding a sufficiently effective sales activity;

- 8) That Pool teaches against the concept of the present invention with showcases distributed along a roadway and the representation of a parking lot which is not used for any retailing purposes;
- 9) That she has been advised that the Examiner has equated the order/cashier booths of Pool with the cash/wrap region claimed component of the above application;
- 10) That the terms "cash/wrap" has a well established meaning in the retail merchandising trade and refer to a money collection and goods sacking or wrapping location which is not shown in Pool;
- 11) That Pool illustrates that the order-cashier booths are not immediately visible to customers upon entering a fenced boundary;
- 12) That there is no signage described in Pool;
- 13) That "niches" are described in Pool as showcases to display grocery food products three-dimensionally;
- 14) That it is well known that grocery store shelving holds food products generally without retail promotional signage;
- 15) That she has been advised that the Examiner has asserted that Feleppa at Fig. 88 shows a marketplace having a plurality of poles forming a retail area;
- 16) That Feleppa at Fig. 88 shows a frame supported shelter which appears as a tent with a roof having a sign above the roof indicating "produce";
- 17) That the signage of Feleppa cannot be seen from inside the tent if that were a retail area and the use of tents for outdoor retail merchandising has been considered undesirable as described in the instant application;
- 18) That there is no indication in Feleppa as to what activities are undertaken within the tent shown in Fig. 88;
- 19) That the signage utilized in conjunction with tent-based outdoor marketing generally is small and without resemblance to the signage utilized and claimed in the above-identified application;
- 20) That Feleppa is not concerned with retail marketing and has been improperly combined with Pool, and, when considered with Pool, cannot suggest the instant invention as claimed;
- 21) That she has been advised that the Examiner has asserted that Thornton shows a plurality of poles extending into sleeves in the ground, the poles being connected at the tops with signage;
- 22) That Thornton shows two poles supporting a sign which is moveable up and down;

- 23) That she has been advised that the Examiner has asserted that the poles of Thornton define a retail floor;
- 24) That the poles shown in Thornton show no retail floor and are not physically associated with any merchandise whatsoever;
- 25) That the Examiner has improperly combined Thornton and Pool and the remaining references;
- 26) That she has been advised that the Examiner has asserted that it would have been obvious to modify Pool to show positioning the merchandise within the bay/niche below the bay access elevation;
- 27) That none of the references, taken singly or in combination show the positioning of merchandise below a bay access elevation;
- 28) That the election of the bay elevation is a consequence of the substantial experience of the inventors in developing retail marketing venues and is not obvious;
- 29) That she has been advised that the Examiner has asserted that it would have been obvious to modify Pool's modified structure to show the step of suspending merchandise information signage as about eight feet;
- 30) That the determination of dimensioning as set forth in the claims is a consequence of the extensive experience of the inventors in the art of developing retail merchandising venues and is not obvious;
- 31) That she has been advised that the Examiner has asserted that it would have been obvious to modify Pool's modified structure to show the spacing of the anchors about three feet to twenty feet;
- 32) That the spacing of the anchors as set forth in the claim is the result of extensive experience on the part of the inventors with the development of retail merchandising environments and is not obvious;
- 33) That she has been advised that the Examiner has asserted that it would have been obvious to modify Pool's modified structure with an arrangement having two poles taller than the signage support at the entrance with an upper banner coupled to two poles;
- 34) That the references show no anchors as claimed, no poles having different heights, no upper banner support assembly extending between the poles of second height, no removable horizontal coupling of the upper banner support assembly, and no banner, let alone suspending a banner from that upper banner support and that would not have been obvious to establish an entrance way in the manner claimed;

- 35) That she has been advised that the Examiner has asserted that it would be obvious to establish an overhead signage sight height as claimed;
- 36) That the signage sight height as claimed is not obvious and is the result of the substantial professional backgrounds which the inventors have combined in developing the very unique outdoor merchandising technique of the invention;
- 37) That by contrast, the customer sight height as described in Pool is one looking horizontally and downwardly from a car window;
- 38) That she has been advised that the Examiner has asserted that the pole and anchor defined boundaries as established in the claims can be equated to the wall of Pool;
- 39) That the boundary in Pool is a fence and the entrance to the boundary is the end of a fence and a curb, while the exit from Pool is an opening between a curb and a fence;
- 40) That she has been advised that the Examiner has asserted that Reilley, et al., shows a retail area having bays with merchandise and signage (50) hanging from the signage support supporting merchandise information;
- 41) That Reilley, et al., describes "price channels" on shelves upon which small thin, tear-off sheets are mounted carrying UPC codes;
- 42) That Reilley, et al., has no signage hanging from a signage support and merely describes a shelf assembly for holding merchandise;
- 43) That Reilley, et al., is improperly combined with Pool and when considered with Pool cannot suggest the instant invention as claimed.
- 44) That all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like, so made, are punishable by fine, or imprisonment, or both, under Section 1001 of Title 18, and that such willful false statements may jeopardize the validity of the application or any document resulting therefrom.
- Further Declarant sayeth naught.

Date 7-10-03


Kristin D. Kern

OBJECTIVE: Career expansion in a position requiring exemplary leadership, and creative project planning and development skills.

EMPLOYMENT HISTORY

1999 - Present: THE SCOTTS COMPANY, Marysville, OHIO 43041
MANAGER, CONSUMER PROMOTIONAL RESOURCES (CPR), N.A.

Manage project development, production and related budget activities for north American consumer promotions, Point of Purchase, product displays and retailer training resources.

Responsibilities include:

- Manage the CPR Team responsible for layout development, design execution, copy writing, production and distribution activities.
- Lead on-going innovative trend research and support integration into interactive training vehicles and platforms.
- Facilitate a creative and team-building environment for department associates including design consultation, idea generation, career enhancement and mentoring.
- Prospect, evaluate and implement ordering, warehouse and fulfillment systems. Monitor Operations including inventory management, activity reports, web-based order systems, associated budgets and process effectiveness.
- Direct and perform seasonal store audits to evaluate current store environments and promotional programs; remain current on all competitive promotional activity.
- Lead efforts for Promotional Consumer Research Attitude & Use, Lift and Case Study activities.
- Supervise planning, development and administration activities for the Corporate Brand Support Incentive Program, and Consumer Advertising Resources.

1998 -1999 THE SCOTTS COMPANY, Marysville, Ohio
SENIOR SPECIALIST, MERCHANDISING & TRAINING

Responsibilities included:

- Managed the design, production, ordering, and budget control processes for the Corporate Promotions Program. Supported all activities for the Sales Field, Marysville-based Retailer Training Seminars.
- Developed and supervised activities related to the Corporate Brand Support Incentive Program. Reacted to Field Sales program inquiries, schedules and processes. Central liaison between Sales and Customer Service departments.

1996-1998 THE SCOTTS COMPANY, Marysville, Ohio
SPECIALIST MERCHANDISING & TRAINING

Responsibilities included:

- Worked with the Department Manager on specific design projects developed to support the Consumer Sales & Marketing Merchandising and Training sectors.
- Designed, developed and managed the Corporate Brand Support Incentive Program
- Developed and maintained project tracking databases for design, print, and print inventories for Merchandising and Training materials.

1994-1996

THE SCOTTS COMPANY, Marysville, Ohio
COORDINATOR, MERCHANDISING

Responsibilities included:

- Assisted with all activities related to Merchandising and Training for the Consumer Business Division.
- Supported activities related to the Sales Merchandiser Field Program.
- Maintained all photographic files and activities related to photographic print use and requirements.

1990-1994

THE SCOTTS COMPANY, Marysville, Ohio
ADMINISTRATIVE SPECIALIST, CREATIVE SERVICES DEPARTMENT

Responsibilities included:

- Monitored the Sales Merchandising Program. Assisted the Director in preparation and distribution of Point Of Purchase materials.
- Acted as a central communication liaison for the Consumer Field Sales Division for Sales and Merchandising activities.
- Expanded the scope of the Scotts Brand Support Incentive Program; selected and managed program suppliers.
- Maintained photographic files and activities related to print requirements, interactive database that managed packaging design and print budgets totaling 2.8M for all Scotts Company businesses, generated purchase orders, prepared and routed copy, design layouts, board art, and advertising materials.

PROFESSIONAL EDUCATION, SKILLS, AWARDS & PROFICIENCIES

EDUCATION:

Columbus State Community College Columbus, OHIO
Major: Business Minor: Design Communications, GPA 3.9.
Buffalo University, New York – 46th Annual Creative Problem Solving Institute (CPSI), certified.

**COMPUTER
PROFICIENCIES:**

MACINTOSH: Quark Express, Freehand, PhotoShop, Illustrator, Word, and FileMaker Pro.
PC: Windows: Excel, Word, Office, Schedule+, PowerPoint and Outlook.

**PROFESSIONAL
AWARDS:**

- 1999 - Awarded Honorable Mention in the 25th Annual International Gallery of Superb Printing for the collection of forty promotional in-store displays and signs; a promotional program specifically designed and developed in cooperation with Wal-Mart, Inc.
- 1999 – Awarded Best Demonstration for the May Do-it Best Market Kick-off Conference.
- 2000 – Featured cover article “A Brand For All Seasons” in the October issue of the most recognized trade magazine in the P.O.P. industry.

**PROFESSIONAL
MEMBERSHIPS:**

- Member of the Point Of Purchase Advertising Institute (POPAI).
- Member of the Point Of Purchase Advertising Institute (POPAI) Mid-West Task Force.
- Member of the Creative Education Foundation “Imagination is the key to problem-solving” – A. Osborne
- Member of NAFE (National Association of Female Executives)
- First United Methodist Church Member; 2003 Building Campaign, Design and Print Resources Committee Chair
- Member of the Union County Memorial Hospital, Development Committee; Community Relations Committee & Diamond Society
- MMS Educational Academic Achievement Committee

**PERSONAL
ACTIVITIES &
INTERESTS:**

- Writing Music
- Performing Arts
- Interior and Exterior Design

EXHIBIT

A

Kern

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DECLARATION UNDER 37 CFR § 1.132

Kristin D. Kern declares as follows:


- 1) That she was formerly known as Kristin E. Griffin;
- 2) That she is a citizen of the State of Ohio, having a residence at 272 Shepherd Lane, Marysville, Ohio 43040;
- 3) That she is an inventor named in the above-identified application for United States patent;
- 4) That her resume is annexed hereto as Exhibit A;
- 5) That she has been advised that the claims of the above-identified application for U. S. patent have been rejected under Section 103 of the Patent Statute, the Examiner citing Pool, U. S. Patent No. 2,638,636 (Pool) in view of Feleppa, U. S. Patent No. 5,700,102 (Feleppa) and Thornton, U. S. Patent No. 3,673,720 (Thornton) and Reilley *et al.*, U. S. Patent No. 5,120,941 (Reilley *et al.*);
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- 8) That Pool teaches against the concept of the present invention with showcases distributed along a roadway and the representation of a parking lot which is not used for any retailing purposes;
- 9) That she has been advised that the Examiner has equated the order/cashier booths of Pool with the cash/wrap region claimed component of the above application;
- 10) That the terms "cash/wrap" has a well established meaning in the retail merchandising trade and refer to a money collection and goods sacking or wrapping location which is not shown in Pool;
- 11) That Pool illustrates that the order-cashier booths are not immediately visible to customers upon entering a fenced boundary;
- 12) That there is no signage described in Pool;
- 13) That "niches" are described in Pool as showcases to display grocery food products three-dimensionally;
- 14) That it is well known that grocery store shelving holds food products generally without retail promotional signage;
- 15) That she has been advised that the Examiner has asserted that Feleppa at Fig. 88 shows a marketplace having a plurality of poles forming a retail area;
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PROFESSIONAL EDUCATION, SKILLS, AWARDS & PROFICIENCIES

EDUCATION:

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- Member of NAFE (National Association of Female Executives)
- First United Methodist Church Member; 2003 Building Campaign, Design and Print Resources Committee Chair
- Member of the Union County Memorial Hospital. Development Committee; Community Relations Committee & Diamond Society
- MMS Educational Academic Achievement Committee

**PERSONAL
ACTIVITIES &
INTERESTS:**

- Writing Music
- Performing Arts
- Interior and Exterior Design